



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2015-0570; FRL-9934-43-Region 9]

Approval of California Air Plan Revisions, San Joaquin Valley

Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). This revision concerns emissions of volatile organic compounds (VOCs), oxides of nitrogen (NO_x), and particulate matter (PM) from wood burning devices. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit comments, identified by docket ID number EPA-R09-OAR-2015-0570, by one of the following methods:

1. *Federal eRulemaking Portal:* www.regulations.gov. Follow

the on-line instructions.

2. *E-mail*: steckel.andrew@epa.gov.

3. *Mail or deliver*: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments will be included in the public docket without change and may be made available online at

www.regulations.gov, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or e-mail.

www.regulations.gov is an "anonymous access" system, and the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to the EPA, your e-mail address will be automatically captured and included as part of the public comment. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: Generally, documents in the docket for this action are available electronically at www.regulations.gov or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at www.regulations.gov, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Rynda Kay, EPA Region IX, (415) 947-4118, kay.rynda@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to the EPA.

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I. The State's Submittal.

A. *What rule did the State submit?*

Table 1 lists the rule addressed by this proposal with the date that it was adopted by the local air agency and submitted by the California Air Resources Board.

Table 1 - Submitted Rule

Local Agency	Rule #	Rule Title	Amended	Submitted
SJVUAPCD	4901	Wood Burning Fireplaces and Wood Burning Heaters	09/18/14	11/06/14

On December 18, 2014, the EPA determined that the submittal for SJVUAPCD Rule 4901 met the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. *Are there other versions of this rule?*

We approved an earlier version of Rule 4901 into the SIP on October 11, 2009 (74 FR 57907). The SJVUAPCD adopted revisions to the SIP-approved version on September 18, 2014 and CARB submitted them to us on November 6, 2014. While we can act on only the most recently submitted version, we have reviewed

materials provided with previous submittals.

C. What is the purpose of the submitted rule revision?

VOCs help produce ground-level ozone, smog and PM, which harm human health and the environment. NOx helps produce ground-level ozone, smog and PM, which harm human health and the environment. PM, including PM equal to or less than 2.5 microns in diameter (PM_{2.5}) and PM equal to or less than 10 microns in diameter (PM₁₀), contributes to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires States to submit regulations that control VOC, NOx, and PM emissions.

Rule 4901 is designed to limit emissions of these pollutants generated by the use of wood burning fireplaces, wood burning heaters, and outdoor wood burning devices. The rule establishes requirements for the sale/transfer, operation, and installation of wood burning devices and on the advertising of wood for sale intended for burning in a wood burning fireplace, wood burning heater, or outdoor wood burning device within the San Joaquin Valley Air Basin (San Joaquin Valley).

The SIP-approved rule was modified to replace the existing episodic curtailment requirement, which required declaration of

a mandatory wood burning curtailment day whenever the $PM_{2.5}$ concentration was forecasted to be greater than or equal to 30 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) or the PM_{10} concentration was forecasted to be greater than or equal to $135 \mu\text{g}/\text{m}^3$, with a new two-tiered curtailment program. During a Level One Episodic Wood Burning Curtailment, which is triggered when the $PM_{2.5}$ concentration is forecasted to be between $20\text{--}65 \mu\text{g}/\text{m}^3$, operation of wood burning fireplaces and unregistered wood burning heaters is prohibited, but properly operated, wood burning heaters that meet certification requirements and have a current registration with the District may be used. Specific certification and registration requirements are outlined in the rule. During a Level Two Episodic Wood Burning Curtailment, which is triggered when the $PM_{2.5}$ concentration is forecasted to be above $65 \mu\text{g}/\text{m}^3$ or the PM_{10} concentration is forecasted to be above $135 \mu\text{g}/\text{m}^3$, operation of any wood burning device is prohibited.¹

The two-tiered curtailment program also replaces a contingency measure provision which would have been implemented in the event that the EPA finalized a rulemaking finding San Joaquin Valley had failed to attain the 1997 $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS) by the applicable deadline.

¹ Locations where natural gas service is not available or where a wood burning device is the sole source of heat in a residence are exempt from both levels of curtailment.

The provision would have required a ban on the operation of all wood burning devices when the $PM_{2.5}$ concentration was predicted to be greater than or equal to $20 \mu\text{g}/\text{m}^3$ or the PM_{10} concentration was predicted to be greater than or equal to $135 \mu\text{g}/\text{m}^3$.

Additionally, the revised rule adds outdoor wood burning heaters to the applicability paragraph, explicitly references to the New Source Performance Standard (NSPS) for New Residential Wood Heaters (40 CFR part 60, subpart AAA) to assure compliance with the latest Federal requirements, and includes other editorial revisions to improve rule clarity.

The EPA's technical support document (TSD) has more information about this rule.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rule?

SIP rules must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(1)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

The San Joaquin Valley is currently designated and classified as an extreme 1-hour ozone nonattainment area and an

extreme 8-hour ozone nonattainment area under both the 1997 and 2008 8-hour ozone standards (40 CFR 81.305). CAA section 172(c)(1) requires ozone nonattainment areas to implement all reasonably available control measures (RACM), including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT), as expeditiously as practicable. Therefore, SJVUAPCD must implement RACM for ozone precursors. While our stringency discussion below focuses on PM emissions, we are not aware of reasonably available controls for these sources for ozone precursors that are not also reasonably available controls for PM. In addition, because residential wood burning takes place in the winter months when ozone concentrations are lower and the probability of exceeding the ozone NAAQS is low, we do not believe it is necessary to assess RACM/RACT for ozone and its precursors independently from our assessment of RACM/RACT for PM.

San Joaquin Valley is designated and classified as a moderate nonattainment area for the 2006 24-hour $PM_{2.5}$ standard (40 CFR 81.305). CAA sections 172(c)(1) and 189(a)(1)(C) require moderate $PM_{2.5}$ nonattainment areas to implement RACM and RACT as expeditiously as practicable. Therefore, SJVUAPCD must implement RACM, including RACT, for $PM_{2.5}$ and $PM_{2.5}$ precursors.

San Joaquin Valley is designated and classified as a serious nonattainment area for the 1997 annual and 1997 24-hour $PM_{2.5}$ standards (40 CFR 81.305). CAA section 189(b)(1)(B) requires serious $PM_{2.5}$ nonattainment areas to implement best available control measures (BACM), including best available control technology (BACT), within 4 years after reclassification of the area to serious. Therefore, SJVUAPCD must implement BACM, including BACT, for $PM_{2.5}$ and $PM_{2.5}$ precursors.

San Joaquin Valley is currently designated attainment for PM_{10} (40 CFR 81.305). Accordingly, SJVUAPCD is not required to implement RACM/RACT or BACM/BACT for PM_{10} and PM_{10} precursors. Therefore, we are not evaluating Rule 4901 for compliance with RACM or BACM requirements for PM_{10} .

Guidance and policy documents that we use to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
2. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).

3. "Restatement to Update of EPA's SSM Policy Applicable to SIPs", 80 FR 33839, June 12, 2015.

4. "Strategies for Reducing Residential Wood Smoke", EPA-456/B-13-001, March 2013.

B. *Does the rule meet the evaluation criteria?*

We believe this rule is consistent with CAA requirements and relevant guidance regarding enforceability, SIP revisions, and RACM/RACT and BACM/BACT.

The rule requirements and applicability are clear, and the monitoring, recordkeeping, reporting and other provisions sufficiently ensure that affected sources and regulators can evaluate and determine compliance with Rule 4901 consistently. Additionally, Rule 4901 includes several provisions that together provide continuous control of PM emissions consistent with the CAA and EPA guidance on start-up, shut-down, and malfunction, including an episodic curtailment program, certification and registration requirements, restrictions concerning materials that can be burned, and a limit on visible emissions from residential chimneys.

The District estimates that the new tiered curtailment program described in Rule 4901, Paragraph 5.6, would reduce average winter burning season emissions by 3.27 tons per day (tpd) PM_{2.5} and would reduce annual average emissions by 1.09 tpd

PM_{2.5}, when compared to the current SIP-approved version of Rule 4901. The District states that allowing registered devices to operate on additional days (i.e. during Level One Curtailment days) and subsidizing change-outs for cleaner burning devices would provide significant incentive for residents to transition from higher polluting devices and result in additional emission reductions beyond 3.27 tpd PM_{2.5}.

We propose to determine that our approval of the submittal would comply with CAA section 110(1), because the proposed SIP revision would not interfere with the on-going process for ensuring that requirements for RFP and attainment are met and the submitted SIP revision is at least as stringent as the rule previously approved into the SIP. CAA section 193 does not apply to this action because the submitted SIP revision does not weaken any SIP control requirement in effect before November 15, 1990.

We assess whether Rule 4901 implements BACM/BACT for PM_{2.5},² by using an analysis provided by the District and comparing provisions found in Rule 4901 with the EPA document "Strategies for Reducing Residential Wood Smoke", EPA-456/B-13-001, March 2013 and current State and District wood burning rules. This

²Because RACM/RACT represents a less stringent level of control than BACM/BACT, we have not separately evaluated the rule with respect to RACM/RACT.

evaluation is described in the TSD. Based on this evaluation, we believe the September 18, 2014 version of Rule 4901 implements BACM/BACT for wood burning devices in the San Joaquin Valley considering technological and economic feasibility.

C. *EPA recommendations to further improve the rule*

The TSD describes additional rule revisions that we recommend for the next time the local agency modifies the rule but are not currently the basis for rule disapproval.

D. *Public comment and proposed action*

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rule because we believe it fulfills all relevant requirements. We will accept comments from the public on this proposal until [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**]. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate this rule into the federally enforceable SIP.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the SJVUAPCD rule described in Table 1 of this notice. The EPA has made, and will

continue to make, these documents available electronically through www.regulations.gov and in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

AUTHORITY: 42 U.S.C. 7401 *et seq.*

Dated: September 14, 2015. Jared Blumenfeld,
Regional Administrator,
Region IX.

6560-50-P

9/30/2015]